The following decisions of the state or federal courts have held compliance with the Compensation Act of the particular state involved to be a bar to a claim of indemnity implied in law.

Colorado: In *Ward* v. *Denver & R. G. W. R. Co.*, 119 F. Supp. 112, it was held that the payment of compensation by the employer was a bar to the bringing of a third-party action against him for indemnification. Section 292 of Chapter 97 of the Colorado Statutes Annotated provides as follows:

> "Any employer who has elected to and has complied with the provisions of this article, including the provisions relating to insurance, shall not be subject to the provisions of the last preceding section; nor shall such employer be subject to any other liability whatsoever for the death of or personal injury to any employee, except as in this article provided; and all causes of action, actions at law, suits in equity, and proceeding whatever, and all statutory and common law rights and remedies for and on account of such death, or personal injury to any such employee and accruing to any and all persons whomsoever, are hereby abolished except as in this article provided."

Maryland: In *Baltimore Transit Co.* v. *State to Use of Schreifer*, 183 Md. 674, cited as declaratory of Maryland law in *Clarke* v. *U. S.*, 115 F. Supp. 14, it was held that an employer who complies with the compensation act may not be impleaded in an action brought by the employee against a third-party. The annotated code of Maryland does not contain any provision discussing the exclusive liability of the employer.

New Jersey: In *Slattery* v. *Marra Bros. Inc.*, 186 F. 2d 134, it was held that compliance with the compensation statute was a valid defense. Section 34:15-8 of the New Jersey Statutes Annotated provides as follows:

> "Such agreement shall be a surrender by the parties thereto of their rights to any other method, form or amount of compensation or determination thereof that has provided in this article and an acceptance of all the provisions of this article, and shall bind the employee himself and for compensation for his death shall bind his personal representative, his widow and next of kin, as well as the employee, and those conducting his business during bankruptcy or insolvency."

North Carolina: Held to be a bar in the cases of *Lovette* v. *Lloyd*, 236 No. Carolina 663; *Brown* v. *Southern Railway*, 202 No. Carolina 256; *Essick* v. *City of Lexington*, 232 No. Carolina 200; *Hoover* v. *Globe Indemnity Co.*, 202 No. Carolina 655; and *Hunsucker* v. *High Point Bending and Chair Co.*, 237 No. Carolina 559. Section 97-10 of the General Statutes of North Carolina provides as follows:

> "The rights and remedies herein granted to an employee where he and his employer have accepted the provisions of this article, respectively, to pay and accept compensation on account of personal injury or death by accident, shall exclude all other rights and remedies of such employee, its personal representative, parents, dependents or next of kin, as against his employer at common law, or otherwise, on account of such injury, loss of service, or death: * * *"

Ohio: Held to be a bar in *Bankers Indemnity Insurance Co.* v. *Cleveland Hardware & Forging Co.*, 77 Ohio App.

121. Section 1465-70 of Pages Ohio General Code provides as follows:

> "Employers who comply with the provisions of section 1465-69 shall not be liable to respond in damages at common law or by statute, for any injury disease or bodily condition, whether such injury, disease or bodily condition is compensable under this act or not, or for any death resulting from such injury, disease or bodily condition, of any employee, wherever occurring, during the period covered by such premium so paid into the State Insurance Fund, or during the interval of time in which such employer is permitted to pay such compensation direct to his insured or the dependents of his killed employees as herein provided."

Oklahoma: Held to be a bar in *Peak Drilling Co. v. Halliburton Oil Well Cement Co.*, 215 F. 2d 368. Section 12 of Title 85 of Oklahoma Statutes Annotated provides as follows:

> "The liability prescribed in the last preceding section shall be exclusive and in place of all other liability of the employer and any of his employees, at common law or otherwise, for such injuries, loss of services or death, to the employee, spouse, personal representative, parents, dependents, or any other person * * *"

Pennsylvania: Held to be a limited bar in *Maio* v. *Fahs*, 339 Pa. 180. The Pennsylvania Workman's Compensation Act as found in Title 77 of Purdon's Pennsylvania Statutes Annotated does not contain an exclusive liability section.

South Carolina: In *Burns* v. *Carolina Power & Light Co.*, 88 F. Supp. 769, aff'd 193 F. 2d 525, the Court declared that

if they had to decide this point they would find it to be a bar. Section 72-401 of the Code of Laws of South Carolina, 1952, provides as follows:

> "Every employer who accepts the compensation provision of this Title shall secure the payment of compensation to his employee in the manner provided in this Chapter. While such security remains in force he or those conducting his business shall only be liable to any employee who elects to come under this Title for personal injury or death by accident to the extent and in the manner specified in this Title."

Wisconsin: Held to be a bar in *Buggs* v. *Wolff*, 201 Wisc. 533 and *Guse* v. *A. O. Smith Corp.*, 260 Wisc. 403.

The following decisions of the state or federal courts have held compliance with the compensation act of the particular state involved not to be a bar to a claim of indemnity implied in law:

California: In *Baugh* v. *Rogers*, 24 Calif. 2d 200, it was held that the payment of compensation by the employer is no defense to an action for indemnification against the said employer by a third-party. Section 3601 of the Labor Code of California provides as follows:

> "Where the conditions of compensation exist, the right to recover such compensation, pursuant to the provisions of this division is, except as provided in Section 3706, the exclusive remedy against the employer for the injury or death."

Iowa: Held no bar to indemnification from the employer in *American District Telegraph Co.* v. *Kittleson*, 179 F. 2d

946. Section 85.20 of the Iowa Code Annotated provides as follows:

> "The rights and remedies provided in this Chapter for an employee on account of injury shall be exclusive of all other rights and remedies of such employee, his personal or legal representatives, dependents, or next of kin, at common law or otherwise, on account of such injury * * *"

Minnesota: Held to be no bar in *Lunderberg* v. *Bierman*, 63 N. W. 2d 355 (1954), not officially reported as yet. In Section 176.031 of Minnesota Statutes Annotated it is provided as follows:

> "The liability of an employer prescribed by this Chapter is exclusive and in the place of any other liability to such employe, his personal representative, surviving spouse, parent, any child, dependent, next of kin, or other person entitled to recover damages on account of such injury or death."

New York: Held not to be a bar to indemnification from the employer in *Westchester Lighting Co.* v. *Westchester County Small Estates Corp.*, 278 N. Y. 175. Section 11 of the New York Workmen's Compensation Law provides as follows:

> "The liability of an employer prescribed by the last preceding section shall be exclusive and in place of any other liability whatsoever, to such employee, his personal representatives, husband, parents, dependents or next of kin, or anyone otherwise entitled to recover damages, at common law or otherwise on account of such injury or death, except that if an employer fail to secure the payment of compensation for his injured

employees and their dependents as provided in section fifty of this chapter, an injured employee, or his legal representative in case death results from the injury, may, at his option, elect to claim compensation under this chapter, or to maintain an action in the courts for damages on account of such injury; and in such an action it shall not be necessary to plead or prove freedom from contributory negligence nor may the defendant plead as a defense that the injury was caused by the negligence of a fellow servant nor that the employee assumed the risk of his employment, nor that the injury was due to the contributory negligence of the employee."

Rhode Island: Held not to be a bar to indemnification from the employer in *Whitmarsh* v. *Durastone Co.*, 122 F. Supp. 806. Chapter 300 Article I Section 6 of the Rhode Island General Laws provides as follows:

"The right to compensation for an injury, and the remedy therefor granted by this chapter, shall be in lieu of all rights and remedies as to such injury now existing, either at common law or otherwise; and such rights and remedies shall not accrue to employees entitled to compensation under this chapter while it is in effect."

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IN THE

Supreme Court of the United States

OCTOBER TERM—1954

No. 157

RYAN STEVEDORING CO., INC.,

Petitioner,

—v.—

PAN-ATLANTIC STEAMSHIP CORPORATION,

Respondent.

PETITIONER'S OBJECTIONS TO MOTION OF AMERICAN MERCHANT MARINE INSTITUTE, INC., FOR LEAVE TO FILE A BRIEF *AMICUS CURIAE*

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IN THE

Supreme Court of the United States

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RYAN STEVEDORING CO., INC.,

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PETITIONER'S OBJECTIONS TO MOTION OF AMERICAN MERCHANT MARINE INSTITUTE, INC., FOR LEAVE TO FILE A BRIEF *AMICUS CURIAE*

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioner, Ryan Stevedoring Co., Inc., respectfully objects to the motion of the American Merchant Marine Institute, Inc., for leave to file a brief as *amicus curiae* in the above entitled matter. Petitioner has withheld its consent to the filing of such brief for the reasons hereinafter stated.

When the petitioner filed its petition and brief for a writ of certiorari to issue out of this Court, directed to the United States Court of Appeals for the Second Circuit, the National Association of Stevedores applied to this Court for leave to file a brief *amicus* in support of certiorari being granted. The respondent herein opposed said application of said Association. At pages 2 and 3 of its brief in oppo-

sition to the motion of said stevedoring association the respondent set forth the substance of a letter it had written to counsel for said proposed *amicus* on August 4, 1954. For ready reference we here set forth what the respondent shipowner stated as its reason for opposing the stevedoring association's filing a brief as *amicus*.

> "You will see therefrom we have taken the position that the *facts are peculiar* and are not in any way typical of the ordinary relationship between shipowner and stevedore. We call your attention to the fact that the parties here are wholly-owned subsidiaries of a common parent and the contractual arrangements between them were informal and unusual.
>
> If we felt that there was something in the pending case which might classify it as a 'test' case, we would be very pleased to have briefs filed by anyone interested in the subject. *We feel that this is a private fight having no effect, directly or indirectly, upon anyone other than the Underwriters for the parties concerned,* and therefore we regret that we are not able to consent to your filing a brief." (Italics supplied.) (Pages 2 and 3 of respondent's brief in opposition to motion of the National Association of Stevedores to file a brief *amicus*.)

By order of this Court the application of the National Association of Stevedores to file a brief *amicus* was denied on October 14, 1954.

Now comes the American Merchant Marine Institute, Inc., and in its application for leave to file a brief *amicus* it seeks to show the importance of the subject before this Court. However, it in no way complies with Rule 42 (3) of the Rules of this Court. It does not show that the respondent, on whose side it seeks to align itself, has not raised

all the questions of fact or law which are projected by this case. Indeed, it has not shown that the respondent has not adequately presented the facts or the questions of law inherent in this case.

Further, inherent in the application of the American Merchant Marine Institute, Inc., would appear to be an undertone that what it seeks to set forth as broad propositions of law "by way of supplementing" the respondent's argument is known to only an enlightened few. Actually, an analysis of the brief, sought to be filed by this applicant, shows an identical argument under Points I and III of its brief as is contained in Point I of respondent's brief. Similarly, Point II of the applicant's brief is identical in approach with Point II of respondent's brief. The very same decisions are discussed in the respondent's brief as are set forth in the applicant's brief.

The similarity (if not identity) of argument and approach between applicant's brief and that of respondent indicates quite clearly that the applicant merely echoes the respondent's arguments. Petitioner assumes that the weight of numbers on one side of any proposition adds nothing to the disposition that should be made of any given proposition of law.

The fallacy of the applicant's approach to the factual problem which has been presented to this Court by petitioner and respondent is best seen in the applicant's statement, which we assume was inadvertent, that "it be permitted to discuss in a brief those fundamental principles of law which govern the right of one liable *without fault* to recover indemnity * * *" (Italics supplied.)

The applicant has lost sight completely of the Trial Court's opinion in which the *fault* of the respondent was clearly outlined as follows (R. 316; 317):

"In accordance with the allegations of plaintiff's complaint, and in line with the theory upon which the case was tried, the jury was charged as to unseaworthiness and negligence.

* * * * *

"In my judgment there is sufficient evidence in this record to justify a finding of negligence on the part of Pan-Atlantic by the jury, and also, pursuant to the stipulation of the parties, for the Court to make such a finding with respect to the issues raised by the third party complaint."

In affirming the injured longshoreman's recovery against the respondent herein, the Court of Appeals, 2nd Circuit, again found the *fault* of the respondent in this record. It said (R. 326):

"There was ample evidence to support a jury verdict on either or both negligence or unseaworthiness."

If this proposed *amicus* seeks to discuss "fundamental principles of law which govern the right of one liable without fault to recover indemnity from another" then the above entitled action in which the respondent has been found at *fault* by all Courts is not the one in which this proposed *amicus* should seek intervention.

Since it is palpably clear that the motion and brief of the American Merchant Marine Institute, Inc., as *amicus*, is nothing more than a "ditto" mark of the respondent's brief, the petitioner's objection to the instant motion should be sustained and the motion denied, to which end the petitioner's objections are

Respectfully submitted,

SIDNEY A. SCHWARTZ,
Counsel for Petitioner.

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IN THE

Supreme Court of the United States

OCTOBER TERM—1954

No. ~~557~~ 4

RYAN STEVEDORING CO., INC.,

Petitioner,

—v.—

PAN-ATLANTIC STEAMSHIP CORPORATION,

Respondent.

PETITIONER'S OBJECTIONS TO MOTION OF ASSOCIATION OF AMERICAN SHIP OWNERS TO FILE BRIEF AS *AMICUS CURIAE*

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IN THE

Supreme Court of the United States

OCTOBER TERM—1954

No. 157

RYAN STEVEDORING CO., INC.,

Petitioner,

—v.—

PAN-ATLANTIC STEAMSHIP CORPORATION,

Respondent.

PETITIONER'S OBJECTIONS TO MOTION OF ASSOCIATION OF AMERICAN SHIP OWNERS TO FILE BRIEF AS *AMICUS CURIAE*

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioner, Ryan Stevedoring Co., Inc., respectfully objects to the motion of the Association of American Ship Owners for leave to file a brief as *amicus curiae* in the above entitled matter. Petitioner has withheld its consent to the filing of such brief for the reasons hereinafter stated.

The Association of American Ship Owners does not even make a pretense to comply with Rule 42 (3) of this Court to show facts or questions of law that have not been or will not be adequately presented by the parties to this matter.

The motion of the aforesaid Association is dictated seemingly by a desire to show by weight of numbers of *amici* (there also has been presented to this Court the motion of the American Merchant Marine Institute, Inc., for leave to

file a brief *amicus*) that the contentions of the shipowner-respondent are correct. Indeed, nowhere in the motion is it stated that the respondent herein has not or will not adequately present the facts and questions of law that are involved in this matter.

The sole and expressed purpose of the motion of this Association is that this Court will know of the "carrier's wishes" (see p. 2 of the motion of said Association). The Association has misconceived, petitioner respectfully submits, what this Court said in *Halcyon Lines* v. *Haenn Ship Corp.*, 342 U. S. 282, with respect to a presentation of the carrier's wishes. In the cited case this Court, as petitioner reads the decision, indicated that the best forum to present the views of the various diverse interests in the type of subject here involved was the legislative forum where

> "legislative consideration of action can best bring about a fair accommodation of the diverse but related interests of these groups. The legislative process is peculiarly adapted to determine which of the many possible solutions to this problem would be most beneficial in the long run."

In view of the complete failure of the motion of the Association of American Ship Owners to comply with the requirements of Rule 42 (3) of this Court, the motion of said Association to file a brief *amicus* should be denied and it is to that end that the petitioner's objections, set forth herein, are

Respectfully submitted,

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HAROLD B. WILLEY, Clerk

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No. 157

RYAN STEVEDORING CO., INC.,

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PAN-ATLANTIC STEAMSHIP CORPORATION,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF FOR PETITIONER TO THAT OF PAN-ATLANTIC STEAMSHIP CORPORATION

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Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF FOR PETITIONER TO THAT OF PAN-ATLANTIC STEAMSHIP CORPORATION

Replying to Point I

The respondent has not shown at any place in Point I of its brief that the legislative history is on the side of the respondent's argument respecting the statute here involved. In that posture of there being no aids to legislative intent, petitioner respectfully submits that it is entitled under the authorities set forth in its main brief, Point I thereof, "to rest on the clear, unambiguous words of the statute" (*Baird* v. *John McShain Inc.*, 108 F. Supp. 553) which have been indicated to be compelling guides to legislative intention (*United States* v. *American Trucking Associations*, 310 U. S. 534, 543, n. 18; *Schwegmann Bros.* v. *Calvert Distillers*, 341 U. S. 384, 390-395).

However, the respondent attempts to argue now that this is a breach of contract case instead of a tort case. To arrive at that result the respondent attempts to differ-

entiate between quasi-contract, implied contract and tort. Completely lost sight of by the respondent is that the alleged breach of contract is bottomed upon a tort (negligence in the performance of the contract) and that the remedy of indemnity in such a situation is a quasi-contractual remedy. These terms, viz., quasi-contractual and implied contract, are synonymous. No matter how the remedy may be characterized, it is granted on tort principles which in turn are controlled by the quality of the negligence of the party claiming indemnity and the party claimed against.

Indeed, if what the parties have alleged in pleadings is determinative of what theory is invoked, the respondent predicated its claim not on a contract proposition but on a tort proposition. For, the third party complaint of the respondent against the petitioner is bottomed *solely* in negligence. Thus, the pertinent allegations of the third party complaint read as follows (R. 12, 13):

> "* * * If the rolls of pulp were loaded improperly or in a negligent manner without being properly tiered, piled and secured, and if the SS Canton Victory at the times mentioned in the complaint was thus rendered unseaworthy, such unseaworthiness was caused and created solely through the conduct, negligence, carelessness and recklessness of the third-party defendant, Ryan Stevedoring Co. Inc., its agents, servants and/or employees in the manner in which they performed the aforesaid work and in their failure to make proper preparation and to take proper precautions in the carrying out of the aforesaid work."
>
> * * * * *
>
> "Thirteenth: That if the plaintiff is successful in this action the third-party plaintiff, Pan-Atlantic

Steamship Corporation, will be damaged in the sum of money recovered by the plaintiff.

Fourteenth: The third-party plaintiff, Pan-Atlantic Steamship Corporation, will be so damaged by reason of the aforesaid conduct, negligence, carelessness and recklessness of the third-party defendant, Ryan Stevedoring Co. Inc."

What the respondent is seeking to do obliquely by the distorted argument that is now made under Point I of its brief is to have this Court believe that there is an express contract of indemnity *which does not exist in the instant matter at all.*

The development of the argument under Point I of respondent's brief is an attempt to draw this Court's attention away from the tortious conduct of the respondent which has been found by the jury in its verdict, which has been found by the Trial Court in its opinion herein (R. 316, 317) and by the U. S. Court of Appeals in its opinion (R. 326).

The respondent would have this Court believe that because of there having been a contractual relationship between the respondent and the petitioner a rule of indemnity, whether characterized as quasi-contract or implied contract, exists different from that which is applied where the putative indemnitor and indemnitee are strangers to one another.

Thus, the respondent makes the bald statement at page 19 of its brief in dealing with five decisions therein cited that they are largely unimportant *here* because of the contract features found by the Court of Appeals. Indeed, in four of the five cases (the only exception being *Slattery* v. *Marra Bros., Inc.*, 186 F. 2d 134) the putative indemnitor and indemnitee *were in a contractual relation* to one another. *Despite* that the Court of Appeals for the Second

Circuit did not in these *contractual*, so called, cases grant indemnity because of the reasons therein stated, all of which reasons apply to the case at bar.

The respondent at pages 12 and 13, in answer to the petitioner's argument as to what compensation carriers would have to do in other matters, if the decision of the U. S. Court of Appeals in the instant matter were affirmed, states that the course of anticipated conduct which the petitioner indicated would have to be resorted to would be "violation of the law" and "fraudulent." The respondent has lost sight of the fact that under the New York Workmen's Compensation Act, upon which the Federal Statute here involved is modeled, the compensation carrier when it obtains title to the third-party action by operation of law (here by 33 U. S. C. A. §933 [b]) has the right to conduct any litigation that it sees fit but

> "is under no duty to prosecute against the third party * * *."

Skakandy v. *State of New York*, 274 App. Div. 153, affirmed 298 N. Y. 886. To the same effect see *Corsi* v. *Jenkins*, unofficially reported, 66 N. Y. S. 2d 98, not officially reported.

The respondent tucks away in footnote 2, page 13 of its brief, an oblique reference to a constitutional problem respecting a divestiture of property rights if the Statute were construed as contended for by the petitioner.

In *United States* v. *Nebo Oil Co.*, 190 F. 2d 1003, the Court in its discussion of divestiture of property and due process distinguished between *vested* and *inchoate* rights as follows (p. 1008):

> "True, there is no rule or principle known to our system of the law whereby private property can be taken from one person and conveyed to another for his private use and benefit. It is equally true

that remedial legislation frequently has an effect upon the control and disposition of property. The principal restriction upon legislation of this nature appears to be that vested rights must not be disturbed. *But many rights, privileges and immunities having to do with ownership under a specific state of the law, cannot be regarded as vested rights. To be a vested right it must have become a title, legal or equitable, to the present or future use and enjoyment of property.* Cooley's Constitutional Limitations (8 ed.), Vol. 2, Chapter XI; see Pennie v. Reis, 132 U. S. 464, 10 S. Ct. 149, 33 L. Ed. 426; Pearsall v. Great Northern Railway Company, 161 U. S. 646, 16 S. Ct. 705, 40 L. Ed. 838. *It cannot be considered a vested right if it is nothing more than a mere expectation, or hope, based upon an anticipated continuance of the applicable general laws.*" (Italics supplied.)

That no one has a vested right in the law has been often stated by this Court. *Silver* v. *Silver*, 280 U. S. 117, 50 S. Ct. 57; *Wilmington Star Mining Co.* v. *Fulton*, 205 U. S. 60, 27 S. Ct. 412.

In the instant matter there is no contractual right between the respondent and petitioner which is vested and which would be divested if the Statute were construed as the petitioner herein contends. See *United States Light & Heat Corp.* v. *Niagara Falls G. & E. L. Co.*, 47 F. 2d 567.

In dealing with this very Statute the District Court in *Coates* v. *Potomac Electric Power Co.*, 95 F. Supp. 779, held that the right to contribution was not a *vested* right which the instant Statute might not abrogate.

Manifestly, the so called contractual rights or arrangement between the respondent and petitioner arose many years after the enactment of the Statute involved and

therefore the respondent had no rights which had become vested as of the enactment of this Statute. *Mountain Timber Co.* v. *Washington*, 243 U. S. 219, 37 S. Ct. 260.

Scapitur: the respondent has shown nothing in its Point I which destroys or even mitigates petitioner's argument under Point I of the latter's brief.

Replying to Point II

That this is a maritime tort non-collision matter admits of no dispute, the respondent's argument to the contrary notwithstanding. *Halcyon Lines* v. *Haenn Ship Ceiling Co.*, 342 U. S. 282; *Pope & Talbot, Inc.* v. *Hawn*, 346 U. S. 406.

This Court in the *Halcyon* case indicated quite clearly that generally[1] courts exercising a common law jurisdiction have held that they cannot create a right of contribution between joint tort feasors. It was felt that such a right in the maritime law would be created if this Court were convinced

> "that it would best serve the ends of justice."

Since indemnity is nothing more than "full"[2] or "extreme"[3] contribution, the result arrived at by this Court in the *Halcyon* case should apply.

This would afford insurers, shipowners, stevedores and even unions, representing the longshoremen of our nation, to present their views to appropriate committees of the Congress.

---

1 Research discloses that Pennsylvania, Minnesota and Wisconsin have by decisional law created a right of contribution between joint tort feasors.

2 *Bacile* v. *Halcyon Lines*, 187 F. 2d 403, 406, rev'd *sub nom. Halcyon Lines* v. *Haenn*, 342 U. S. 282.

3 *Slattery* v. *Marra Bros.*, 186 F. 2d 134.

Replying to Point III

Again endeavoring to color all argument with the untenable hue of a contract case (without frankly stating to the Court that the breach of a contract to perform services is bottomed in negligent performance which creates under the common law a cause of action for indemnity implied in law in the absence of a contractual provision for indemnity *and* in the absence of active and affirmative negligence of the putative indemnitee)[4] the respondent studiously avoids discussion of the *uncontradicted* testimony, which completely supports the Trial Judge's findings that (R. 316-319):

(1) the injured longshoreman tried his action against the respondent on the theory of negligence and unseaworthiness;

(2) the injured longshoreman alleged in his complaint (R. 8) that the respondent caused the rolls of pulp to be loaded in a careless manner;

(3) the evidence from the mouth of the respondent's own cargo mate was that he was in complete control of the loading and unloading operation, that his job was to see that the cargo was *chocked* properly, and that if he saw anything wrong he would have taken steps to stop the work.

Indeed, the very bottom tier, involved in this accident, was put in to his satisfaction (R. 259).

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[4] Indeed, one of the authorities relied upon by respondent, *McFall v. Compagnie Maritime Belge*, 304 N. Y. 314, sets forth in clear language petitioner's contention that in so-called "contract" cases, *i.e.*, no express contract of indemnity but a contractual relation between putative indemnitor and putative indemnitee, a cause of action for indemnity is based on tort principles and the quality of the negligence of the parties, *i.e.*, active or passive, determines the granting or withholding of indemnity.

Respondent at page 33 of its brief states that the Court of Appeals placed the ultimate responsibility on the stevedore, "who is best situated as a *matter of fact* to remedy the conditions which caused Palazzolo's injury." (Italics supplied.)

Completely silent is the respondent respecting the fact that the cargo mate testified as follows (R. 238):

> "Q. Now, you were down in No. 3 at the time he was hurt, weren't you, Captain Fisher? A. Yes, sir.
>
> Q. About what hour do you fix the time of the event? A. It was 4 P. M.
>
> Q. About 4 P. M.? A. Yes, sir.
>
> Q. How long had you been down there, according to your present recollection, before Mr. Palazzolo was injured? A. That is hard to say; I think maybe five minutes, it could have been ten minutes."

Since the jury believed the longshoreman's witnesses that wedges were never supplied by the respondent because it didn't believe in wedges (R. 127, 285) and that only makeshifts had been supplied by respondent to chock this cargo of rolls of pulp, how can the respondent in good conscience put the total loss on petitioner where it has been found as a fact:

(1) that respondent *furnished* defective appliances and

(2) that the cargo mate who was right at the very spot had ample opportunity under his own testimony not only to discover the conditions which were *open* and *entirely visible* but who, unless he was totally blind or unconcerned with the conditions, had actual knowledge thereof.

The trial Court's determination that respondent and petitioner were *joint tort feasors* (connoting the active participation of the respondent in the negligence complained of and said active participation causing the accident) is completely supported by the evidence.

However much the respondent attempts to slough off "inference, causation and the quality of tortious conduct" (Resp. Br. 35), the arguments the respondent makes on "contract" when placed in a crucible of analysis leave a precipitate of nothingness.

As a reply to the brief of the respondent and in support of the Conclusion set forth in petitioner's main brief, this brief is

Respectfully submitted,

SIDNEY A. SCHWARTZ
EDWARD ASH
Counsel for Petitioner

SUPREME COURT, U.S.
MAR 1 1955

IN THE

Supreme Court of the United States

October Term—1954

No. 157

IVAN STEVEDORING CO., INC.,

Petitioner,

—v.—

PAN-ATLANTIC STEAMSHIP CORPORATION,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF FOR PETITIONER TO THAT OF THE UNITED STATES, AS AMICUS CURIAE

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IN THE

Supreme Court of the United States

October Term—1954

No. 157

RYAN STEVEDORING CO., INC.,

Petitioner,

—v.—

PAN-ATLANTIC STEAMSHIP CORPORATION,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF FOR PETITIONER TO THAT OF THE UNITED STATES, AS AMICUS CURIAE

In the view petitioner took of the questions presented to this Court, the construction of the statute here involved was the first question for determination. It is palpably clear, petitioner submits, that, if the petitioner's contentions respecting the statute are held to be correct by this Court, then all other questions become moot.

In that posture of the matter and to preserve what petitioner believes is a logical sequence, petitioner in this reply brief will address itself first to the Government's argument respecting the statute involved (44 Stat. 1424, 33 U. S. C. §901 *et seq.*, 33 U. S. C. A. §901 *et seq.*), which is Point II of the Government's brief, pages 37 to 52 thereof.

Replying to Point II, Pages 37 to 52

Upon the argument of this matter on March 3, 1955, counsel for the Government frankly *conceded* in answer to a question of the Court, that the Government, speaking through him, did not know and could not say who was embraced by the legislative words (Sec. 5, 905 of 33 U. S. C. A.).

> "* * * *anyone otherwise entitled to recover damages from such employer* at law or in admiralty on account of such injury or death * * *." (Italics supplied.)

Government's counsel suggested that the words meant to embrace "second" wives. How "second" wives could be so embraced by these words escapes appreciation, especially where this Court has disallowed death benefits to a "lawful" "widow" by reason of her marital and extra-marital activities which disenfranchised her from the statute's protection (*Thompson* v. *Lawson*, 347 U. S. 334, 74 S. Ct. 555).

Certainly, the Congress could not have meant what the Government suggests. Further, the Congress certainly was not using meaningless language. It meant what it said, *viz.*; "*anyone* otherwise entitled to recover damages from such employer," which includes the shipowner. Thus, the Court of Appeals of Maryland in *Standard Wholesale Phosphate & Acid Works* v. *Rickert*, 193 Md. 20, in passing on this question *directly* and not by dictum,[1] said (p. 30):

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1 The Government, in footnote 37 at page 47 of its brief, states that the *Standard* case "involved a situation in which apparently the employer owed no independent duty to the third party which in turn was itself guilty of serious negligence." A fair reading of the decision will show that, despite the *contractual* relationship between shipowner and stevedore, and with *no* discussion as to the serious negligence of the shipowner, as urged by the Government, the Court of Appeals for Maryland held this statute to bar a claim to a claim of indemnity by the shipowner against the stevedore.

"We think the appellant (shipowner) falls *squarely* within the definition of 'anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury.' *It follows that his right to indemnity or contribution is foreclosed by the Act*, and hence the employer cannot be impleaded." (Parenthetical and italics supplied.)

If the liability of the employer for those benefits provided for by the Act is the "exclusive" liability to "anyone (such as the shipowner) otherwise entitled to recover damages from such employer" the *statutory* scheme would not be violated in *any* respect.

Such a construction would grant the benefits, provided for by the statute, to the injured longshoreman or harbor worker and it would circumscribe the liability of the employer. The employer would know that his liability would be fixed and circumscribed as to amount in a personal injury case by §908 of 33 U. S. C. A. and §909 of 33 U. S. C. A. in a death case.

If the construction contended for by the Government were followed to its logical end, you would have a fixed liability under the statute[2] where the employer was *solely* negligent and a complete open liability, the amount of which would be determined by the trier of the facts, where the employer's negligence or fault *joined* or *concurred* with that of the third party, the shipowner. In this very case the "dollar difference" (if we assume *arguendo* that the

2. In this case, in view of the type of injury, the petitioner's liability for compensation benefits would not have exceeded $11,000. §914 (m) of 33 U. S. C. A.

injured longshoreman would be entitled to the maximum of $11,000) to the employer-stevedore is $64,000.[3]

To petitioner it seems anomalous that it is *penalized* to that extent as a minimum where it has been held at fault with another and yet its liability would have been circumscribed if it were *solely* at fault.

The greatest fault or delinquency, *i.e.*, "sole" negligence, results in circumscription of liability and concurrent or joint fault projects the sky as the limit.

No clearer rebellion against such an inequitable result can be found than is found in *Standard Wholesale Phosphate & Acid Works Inc.* v. *Ruckert Terminal Corporation*, 193 Md. 20, 29-30:

> "In the absence of waiver, the employer's conformance with the statute, by providing compensation in all

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3 The Government has injected at pages 49, 50 and 51 considerations of insurance and makes the bald statement at page 50 that "As a matter of fact, moreover, petitioner is probably protected by its standard compensation policy." The petitioner certainly does not wish to argue dehors the record. However, as petitioner pointed out in its reply brief when it was seeking a writ of certiorari, it only has limited coverage of $25,000 under One (b) of its standard compensation policy. Such coverage is normally provided to a stevedore-employer under a Workmen's Compensation Employers' Liability Policy and such coverage would take care of a liability imposed by law upon the stevedore-employer in favor of a shipowner if the latter were held liable to a stevedore's employee. This points up the financial loss, in the case $50,000 (with possible interest and costs from the date of the judgment), that the petitioner will suffer if the "exclusive" liability under the statute here involved is not held to be the measure of the stevedore's liability. It also points up the completely fallacious argument of the Government at page 51 of its brief that the employer, if it had title under §933 (b) of 33 U. S. C. A., would still bring an action against a shipowner. The Government forgets that where there is an award, title to a third party action (§933 [b]) would pass to the compensation carrier (§933 [i]) and, although it would enure to the benefit of the compensation carrier to recoup its lien (*Fontana* v. *Grace Line*, 205 F. 2d 151, affirming 106 F. Supp. 461; *The Etna*, 138 F. 2d 37) and distribute the excess to the employee (§933 [e] [2]), the stevedore, as an *impleaded* party, as here, would still have the same exposure to an uncertain and open ended liability as the petitioner has. In that state of affairs would such an action be brought?

cases regardless of fault, prevents recovery against him on the ground of negligence. The statute declares his liability for compensation to be exclusive. If it should be construed to preserve his liability, for the payment of a sum measured in whole or in part by the damages sustained by the employee, merely because the negligence of a third party concurred, or is claimed to have concurred, with his own in producing the injury, his liability for compensation would not be exclusive. It is probable that his liability would in most cases exceed the limits set up in the statute. We think it is immaterial whether his liability to a joint tort feasor stems from a statutory right to contribution or from general principles of the admiralty law. In either event it is essentially a liability to pay, or share in the payment of, damages for the injury to his employee, of which the statute relieves him."

To construe the statute other than as is contended for by the petitioner is to open a hole in a dike and to destroy the basic principle of compensation. For, as Judge McCulloch of Oregon said in *Johnson* v. *United States*, 79 F. Supp. 448, 449:

"As well say the employer can be offered to the injured workman as a co-defendant under Admiralty Rule 56, 28 U. S. C. A. following section 723. *The difference is a matter of words only.*" (Italics supplied.)

Admirably answering the untenable argument of the Government is the reasoning of Crane, *Ch. J.*, in his dissenting opinion in *Westchester L. Co.* v. *Westchester C. S. E. Corp.*, 278 N. Y. 175. There, he said (pp. 184-185):

"The employer for an accident causing death to an employee, is liable for the amounts stated in the Com-

pensation Law, and is not liable beyond that to any one upon any cause of action arising out of the death. What has been done below in this case is a violation of this statute under this constitutional provision, *for it makes the employer liable indirectly in an amount which could not be recovered directly.* The employee or the representatives for this accident had no cause of action against the employer; the remedy was solely under the Workmen's Compensation Law, and for the amounts stated therein. This is conceded. Yet because a third party paid the employees' representative it is permitted to recover the payment from the employer. In other words, the representatives receive a large sum of money through a negligence action from the employer merely because the money passes through the hands of a third party; and yet all concede that the employer is not liable to the representatives. *To me this is mere sophistry.*" (Italics supplied.)

Government counsel upon the argument advanced the suggestion that if the statute were construed as contended for by petitioner there might be a constitutional problem involved. Obliquity of reference in its brief to constitutionality, by speaking of a *quid pro quo* to the employee and none to the shipowner, necessitates brief reply.

We are not dealing with a *vested* right to indemnity in favor of the respondent prior to the passage in 1927 of the Act here involved. The cause of action for indemnity, if it exists at all in the general maritime law,[4] arose on July 20, 1949, the date when the longshoreman was injured or on the date when the respondent actually paid the judgment in favor of the longshoreman against it.

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4 The Court is respectfully referred to Point II of petitioner's main brief for a discussion respecting this subject.

Unless the respondent had a vested right in the law, its right to indemnity, if it ever existed under the general maritime law, was abolished by the statute here involved at least 22 years before such a right came into being. For a complete reply to the Government's oblique argument respecting constitutionality, the Court is respectfully referred to:

Silver v. *Silver*, 280 U. S. 117;
Wilmington Star Mining Co. v. *Fulton*, 205 U. S. 60;
Mountain Timber Co. v. *Washington*, 243 U. S. 219;
United States Light & Heat Corp. v. *Niagara Falls G. & E. L. Co.*, 47 F. 2d 567;
Coates v. *Potomac Electric Power Co.*, 95 F. Supp. 779.

and the discussion respecting these authorities and the question of constitutionality, which is to be found at pages 4 to 6 of petitioner's reply to the respondent.

If the statute here involved is construed as contended for by petitioner, the longshoremen and labor generally gain for these reasons. As long as the stevedore-employer remains in any law suit as a party, albeit only as third party defendant, with the statute as no defense and therefor with an open and limitless exposure, the stevedore-employer must handle such a law suit like any other defendant. It must seek to defeat the longshoreman at the very threshold of his action. In the selection of the jury the employer would be allowed the usual challenges given to a defendant in a law suit. The employer would have the right to address the jury at the opening of the matter and to sum up at the end of the trial. The employer would advance those arguments which would defeat plaintiff's (its employee's) recovery against the shipowner-defendant.

The employer's evidence would manifestly be pointed to the exoneration of the shipowner. Only by such means could the stevedore-employer hope to have the shipowner exonerated at the hands of the trier of the facts. With the defeat of the plaintiff-longshoreman any right over by the shipowner would become moot. Thereby, the longshoreman would be relegated to compensation and the employer's liability would become circumscribed and it would be covered by the compensation policy the employer is obligated to obtain.

Further, with the elimination of the stevedore by reason of the statute being read as contended for by the petitioner, settlements of actions brought by longshoremen against the shipowner would be more readily made since there would be no arguments between a defendant-third party plaintiff and a third party defendant as to who was liable and what each should pay.

No matter which way one turns, we come back to the place of beginning, *i.e.*, legislative intent, reasoning, divorced from sophistry, and practical considerations commend themselves to this Court's upholding petitioner's argument respecting the statute here involved.

Replying to Point I, Pages 20 to 36

The Government would have this Court believe that the body of law that governs the instant matter, in so far as indemnity is concerned (and parenthetically the Government does not state that this Court ever under the general admiralty law, where the parties are aligned as they are, in this, a maritime non-collision personal injury action, held indemnity to exist), would grant indemnity merely for a so called breach of contract.

We think it is fair to state that the greatest number of cases dealing with indemnity will show the parties, indemnitee and indemnitor, to be in a *contractual relationship* to one another. Irrespective of that fact, indemnity under the authorities is not granted for a mere breach of contract, so called, but indemnity is granted on tort principles which in turn are governed by the quality of the negligence of the indemnitor and indemnitee.

In the instant matter, whether the proceedings between the respondent, as defendant-third party plaintiff, and the petitioner, as a third party defendant, are looked upon as being ancillary to the main action of the injured longshoreman against the respondent or whether we envision a separate action being brought by the shipowner against the stevedore-employer, after the shipowner has been held liable to the stevedore's employee and has paid such a judgment, nonetheless the quality of the negligence of the putative indemnitee must be first resolved.

Thus, we find a classic example of the mechanics of trying a matter of this kind as well as the substantive law to be applied, in so far as indemnity is concerned,[5] in *McFall* v. *Compagnie*, 304 N. Y. 314. As that decision will indicate the stevedore, Transoceanic Terminal Corporation, was under contract with Compagnie Maritime Belge, the ship-

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5 Whatever the Court said in the *McFall* case respecting the construction of the statute here involved is pure dictum for the Court with commendable frankness said (p. 331 of 304 N. Y.):

"*Although it is not urged here*, passing mention should be made of an affirmative defense raised by Transoceanic but dismissed by the Trial Judge as insufficient in law. * * *" (Italics supplied.)

The New York Court of Appeals not only was influenced by its interpretation of its own compensation statute, as construed in *Westchester Lighting Company* v. *Westchester C.S.E. Corp.*, 278 N. Y. 175, but also by Judge Froessel's decision in *Barbara* v. *Ransom*, 191 Misc. 957, when he was a Justice of the lower Court, Supreme Court of the State of New York, long before the body of law in the federal courts on this subject had developed.

owner. The jury, the trier of the facts there, held that the shipowner was merely passively negligent and therefore was entitled to recover against the *contracting* stevedore. The Appellate Division of the Supreme Court reversed. The New York Court of Appeals, in reversing the Appellate Division, outlined the substantive law applicable in these situations (all of which is based upon tort principles of indemnity, implied in law, revolving around the quality of the fault of each of the wrongdoers) and held that the question of who as between the shipowner and contracting stevedore was the active or passive tort feasor was a question of fact for the trier of the facts, in that case the jury.

Looking to the case *sub judice*, it will be appreciated that the petitioner has maintained throughout that the respondent here, recognizing the principles that have always prevailed in this type of case, alleged a cause of action in its third party complaint against the petitioner herein based upon negligence (R. 12, 13). The respondent had to cast its third party complaint in allegations of active-passive negligence. It had no express, unequivocal hold harmless agreement by which the petitioner agreed to indemnify the shipowner for the latter's active negligence. It appreciated that it could not allege a mere breach of contract to perform stevedoring services and stop its allegations there.

For, if a putative indemnitee without any consideration of the quality of its negligence which has held it liable to a putative indemnitor's employee could recover indemnity against the putative indemnitor merely for a *breach of contract* and by an action based *solely* on breach of contract, there never would be any need to construe indemnity provisions or "save harmless" provisions in a contract between the putative indemnitor and putative indemnitee. There would never have been the need for such decisions as

American Stevedores v. *Porello*, 330 U. S. 446, 457; *United States* v. *Wallace*, 18 F. 2d 20; *Weldon* v. *United States*, 65 F. 2d 748; *Washington & Berkeley B. Co.* v. *Pennsylvania S. Co.*, 215 F. 32; *Kokusai Kisen Kabushika Kaisha* v. *Columbia Stevedoring Co.*, 23 F. Supp. 403, aff'd 100 F. 2d 1016; *Thompson-Starrett Co.* v. *Otis Elevator*, 271 N. Y. 36; *Broderick* v. *Cauldwell-Wingate Co., Inc.*, 305 N. Y. 872, aff'g 281 App. Div. 905.

From these decisions it will become crystal clear that the respondent here had to allege what it did. It has been held liable *for its own negligence and not because of any allegedly negligent performance of the petitioner's contract to stevedore the vessel having been imputed to respondent.*

The mere breach of the contract would not *per se* render the stevedore liable. You must, in the absence of an unequivocal agreement to indemnify, look at the quality of fault.

This is *not* a case of the negligence of a servant or agent being imputable to a master and casting the master into liability to a third person, discussed at length by the Government in Points I and II. It is a case of independent contractors.

If a mere breach of a contract to properly perform services would render the contractor, here, the stevedore, liable, you would have neither decisions construing "hold harmless" agreements nor decisions dealing with the *quality* of fault of the parties in contractual relation to one another.

The Trial Court as the sole trier of the facts denied recovery over under the applicable authorities by reason of the affirmative negligence of which he found the respondent to be guilty.

In that posture of the matter, and as petitioner has argued in its main brief and brief in reply to the respondent herein, the scope of review by the Court of Appeals was limited to a consideration of the record supporting the inferences and findings made by the Trial Court. If this matter had been tried entirely before a jury and the jury had given the longshoreman a verdict against the shipowner, the respondent herein, and then had denied to the latter any right of recovery over against the petitioner herein, under a proper charge of the substantive law as is set forth in petitioner's brief herein and in the *McFall* case, *supra*, we think there can be little question respecting the scope of review by the Court of Appeals for the Second Circuit in view of this Court's holding in *McAllister* v. *United States*, 75 S. Ct. 6.

Indeed, as recently as February 28, 1955, this Court in *Boudoin* v. *Lykes Brothers Steamship Co., Inc.*, No. 406, October Term 1954, in stating the applicable principles of law dealing with a warranty of seaworthiness in an assault case held that the record supported the District Court's findings and inferences as to the disposition of the seaman there involved.

It is therefore respectfully submitted that the finding and determination of the Trial Court here on the proposition of the quality of the fault of the parties to this matter and a denial of any recovery in favor of the respondent against the petitioner are amply supported by the record.[6]

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6 However much the Government inveighs at page 28 of its brief against the *uncontradicted* testimony of the cargo mate of the respondent herein, nonetheless the testimony is in this record and dictated the Trial Court's findings and conclusions. Whatever the authorities, set forth at page 28 of the Government's brief, may say with respect to a captain retaining responsibility only in so far as the stability of the ship is concerned cannot determine the cargo mate's duties in this case for the uncontradicted testimony from his own lips shows that the cargo mate factually was concerned with the ship, the cargo, the safety of the cargo and the safety of the discharging longshoremen.

CONCLUSION

For the reasons stated herein and for those set forth in petitioner's main brief and in petitioner's reply to the respondent herein, it is respectfully submitted that the judgment in the Court below should be reversed and that the judgment entered in the United States District Court should be reinstated with costs to the petitioner in this and in all other Courts.

Respectfully submitted,

SIDNEY A. SCHWARTZ,
EDWARD ASH,
Counsel for Petitioner.

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In the

Supreme Court of the United States

OCTOBER TERM—1955

No. 4

RYAN STEVEDORING CO., INC.,

Petitioner,

—v.—

PAN-ATLANTIC STEAMSHIP CORPORATION,

Respondent.

PETITIONER'S OBJECTIONS TO MOTION OF THE AMERICAN MERCHANT MARINE INSTITUTE, INC., TO FILE BRIEF AS *AMICUS CURIAE*

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In the

Supreme Court of the United States

OCTOBER TERM—1955

No. 4

RYAN STEVEDORING CO., INC.,

Petitioner,

—v.—

PAN-ATLANTIC STEAMSHIP CORPORATION,

Respondent.

PETITIONER'S OBJECTIONS TO MOTION OF THE AMERICAN MERCHANT MARINE INSTITUTE, INC., TO FILE BRIEF AS *AMICUS CURIAE*

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

On February 28, 1955 this Court denied the prior application of the American Merchant Marine Institute, Inc., to file a brief as *amicus* in this matter.

The prior application, so denied, did not present any question of law or fact which had not been adequately presented by the parties herein.

Now comes the American Merchant Marine Institute, Inc., again and in its present application it again fails to demonstrate any questions of law or fact which have not been adequately presented by the parties herein. Its present application is as devoid of compliance with Rule 42(3) of this Court as was its prior application.

It does not show that the respondent, on whose side it seeks to align itself, has not raised all the questions of fact or law which are presented by this case.

The similarity of argument and approach between the applicant's brief and that of the respondent indicates quite clearly that the applicant merely echoes the respondent's arguments. Petitioner assumes that the weight of numbers on one side of any proposition adds nothing to the disposition that should be made of any given proposition.

The only difference between the prior application and the instant one is the citation of some three recent decisions with which the Institute is concerned. How those recent cases are germane to this matter is not outlined at all.

Indeed, the fallacy of the applicant's approach to the factual problem and the questions of law which have been presented to this Court by the petitioner and the respondent is best seen in the applicant's statement that its brief emphasizes the need for a right of indemnity to exist where "one who has done no fault may recover from the wrongdoer."

The applicant has lost sight of the Trial Court's opinion in which the *fault* of the respondent was clearly outlined as follows (R. 316; 317):

> "In accordance with the allegations of plaintiff's complaint, and in line with the theory upon which the case was tried, the jury was charged as to unseaworthiness and negligence.
>
> . . . . . .
>
> "In my judgment there is sufficient evidence in this record to justify a finding of negligence on the part of Pan Atlantic by the jury, and also, pursuant to the stipulation of the parties, for the Court to make such

a finding with respect to the issues raised by the third party complaint."

In affirming the injured longshoreman's recovery against the respondent herein, the Court of Appeals, 2nd Circuit, again found the *fault* of the respondent in this record. It said (R. 326):

"There was ample evidence to support a jury verdict on either or both negligence or unseaworthiness."

If this proposed *amicus* seeks to discuss the fundamental principle "that one who has done no fault may recover from the wrongdoer," then the above-entitled action, in which the respondent has been found at *fault* by all Courts, is not the one in which this proposed *amicus* should seek intervention.

Since it is palpably clear that the renewed motion and brief of this proposed *amicus* is nothing more than a "ditto" mark of the respondent's brief and since its prior application has been denied by order of this Court, the petitioner's objection to the renewed motion of this proposed *amicus* should, it is respectfully submitted, be sustained and the motion for leave to file a brief as *amicus* should be denied.

Respectfully submitted,

SIDNEY A. SCHWARTZ,
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Office - Supreme Court, U. S.
FILED
SEP 3 1955
HAROLD B. WILLEY, Clerk

In the

Supreme Court of the United States

OCTOBER TERM—1955

No. 4

RYAN STEVEDORING CO., INC.,

Petitioner,

—v.—

PAN-ATLANTIC STEAMSHIP CORPORATION,

Respondent.

PETITIONER'S OBJECTIONS TO MOTION OF ASSOCIATION OF AMERICAN SHIP OWNERS TO FILE BRIEF AS *AMICUS CURIAE*

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In the

Supreme Court of the United States

OCTOBER TERM—1955

No. 4

RYAN STEVEDORING CO., INC.,

Petitioner.

—v.—

PAN-ATLANTIC STEAMSHIP CORPORATION,

Respondent.

PETITIONER'S OBJECTIONS TO MOTION OF ASSOCIATION OF AMERICAN SHIP OWNERS TO FILE BRIEF AS *AMICUS CURIAE*

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioner, Ryan Stevedoring Co., Inc., respectfully objects to the motion of the Association of American Ship Owners for leave to file a brief as *amicus curiae* in the above-entitled matter.

This Association sought to file a brief as *amicus* prior to the original argument of this matter and its motion to file a brief in that capacity was *denied* by order of this Court, filed March 7, 1955.

The same delinquency appears in the present application as appeared in the prior application which has been denied heretofore, *viz.*, the applicant has failed to show facts or questions of law that have not been or will not be adequately presented by the parties hereto.

The reason why the applicant has not set forth questions of law or fact which have not been presented by the parties to this matter is that it cannot set forth such questions. Nowhere does this applicant show how the respondent, for whose benefit it seeks to file a brief, has failed to adequately present the shipowners' arguments.

What the applicant actually attempts to do by the instant application is to have this Court reconsider its application, heretofore denied, without any additional factor being presented except the thus far unrequited hope of the Association to have weight of numbers of *amici* of shipowners impress the Court with the argument which has been advanced by Pan-Atlantic Steamship Corporation, the respondent herein.

By reason of the instant application being devoid of any presentation as is required by Rule 42(3) of this Court, the motion of said Association to file a brief *amicus* should be denied and it is to that end that petitioner's objections are

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